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**Judiciary Committee**

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**HB 3147**

**Title:** An act relating to limitations on asbestos-related liabilities relating to certain mergers or consolidations occurring before 1972.

**Brief Description:** Creating provisions relating to asbestos liability.

**Sponsors:** Representatives Hunt, Williams, Priest, Serben and Rodne.

**Brief Summary of Bill**

- Limits a successor corporation's liability for asbestos-related claims to an amount equal to the predecessor corporation's adjusted total gross assets;
- Applies to corporations that became successor corporations before January 1, 1972.

**Hearing Date:** 2/1/06

**Staff:** Trudes Tango (786-7384).

**Background:**

Whether a successor corporation is liable for the debts and liabilities of a predecessor corporation depends upon the circumstances. Under Washington's Business Corporation Act, when one or more corporations formally merge pursuant to statutory procedures, the surviving corporation has all the debts and liabilities of each predecessor corporation absorbed in the merger.

However, absent a merger, the general rule is that a corporation purchasing the assets of another corporation does not, by reason of the purchase of assets, become liable for the debts and liabilities of the selling corporation. Recognized exceptions to this rule are when: (a) the purchaser expressly or impliedly agrees to assume liability; (b) the purchase is a de facto merger or consolidation; (c) the purchaser is a mere continuation of the seller; or (d) the transfer of assets is for the fraudulent purpose of escaping liability. These exceptions were developed to protect the rights of commercial creditors and minority shareholders. In response to product liability cases that did not fit within those exceptions, the courts over the last 20 years have recognized another exception referred to as the "product line" exception. Under the "product line" exception, a successor corporation may be liable when the successor corporation acquires substantially all of the transferor's assets, the successor continues to produce the same product line under a similar name, and the successor benefits from the goodwill of the transferor.

Recently, a few states have adopted laws addressing successor asbestos-related liability, and other states are currently considering similar legislation. The American Legislative Exchange Council has drafted model legislation regarding successor asbestos-related liability. The model legislation limits the total financial liability of a successor corporation to an amount equal to what the predecessor's total gross assets would be worth today.

### **Summary of Bill:**

The legislature finds that the increasing number of asbestos-related claims threatens the continued viability of companies who have never manufactured, sold, or distributed asbestos-related products, and there is a public necessity for a legislative solution. The legislature intends that the cumulative recovery by all asbestos claimants from innocent successors be limited, and intends to simply change the form of asbestos claimants' remedies without impairing their substantive rights, and finds that there are no alternative means to meet this public necessity.

The cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the predecessor corporation's total gross assets. The fair market value is determined at the time that the corporation merged or consolidated and includes an annual adjustment based on the prime rate of each year after merger or consolidation, plus 1 percent.

Once the limit is reached, the successor corporation does not have any responsibility for successor asbestos-related liabilities in excess of that limit.

If the predecessor corporation had assumed or incurred successor asbestos-related liabilities in connection with a prior merger with a prior predecessor, the fair market value of the total gross assets of the prior predecessor shall be the limitation of liability of the current successor corporation.

Guidance is provided regarding how a corporation determines the fair market value of total gross assets. A corporation may establish the fair market value of total gross assets through any method reasonable under the circumstances, including by referencing the going concern value of the assets or the purchase price of the predecessor's assets in an arm's length transaction, or by reference to the value of the assets recorded on a balance sheet.

The adjustment of the fair market value of total gross assets continues until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the successor corporation or a predecessor.

The limitation on liability applies to corporations that became successor corporations before January 1, 1972. The limitation does not apply to a successor that, after a merger or consolidation, continued in the business of mining asbestos, selling or distributing asbestos fibers, or manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as the predecessor's products.

The limitation also does not apply to: (a) workers compensation benefits paid under the state workers' compensation act; (b) claims against a corporation that are not asbestos-related claims; (c) insurance corporations; and (d) obligations under the national labor relations act or under any collective bargaining agreement.

The act applies to all causes of action commenced on or after the effective date of the act, regardless of when the action arose.

"Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos. "Successor asbestos-related liabilities" is defined and includes any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims. Other definitions are provided.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.